



**Ford Motor Credit Company**

**David L. Korman**

Executive Vice President – General Counsel  
(313) 594-7743 / [dkorman@ford.com](mailto:dkorman@ford.com)

January 29, 2004

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

**Via e-mail ([regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov))**

RE: Docket Nos. R-1168, R-1170 and R-1167  
Regulation B (Equal Credit Opportunity), Regulation M (Truth in Leasing), Regulation Z (Truth in Lending)

Dear Ms. Johnson:

Please accept this letter in response to the proposed revisions to Regulations B, Z and M and the Official Staff Commentary relating to the “clear and conspicuous” requirements. Ford Motor Credit Company (Ford Credit) is one of the largest automotive financial services companies in the world. We believe our company has been at the forefront of improved consumer disclosures, as evidenced by our award-winning lease form and leadership for capitalized cost disclosure. In this case, however, we do not believe the best interests of the financial services industry or consumers are served by the proposals.

Ford Credit respectfully requests the proposed new standards (based on those in Reg. P) relating to “clear and conspicuous” be withdrawn. By adding the requirement to call attention to the nature and significance of the Reg. B, Z and M informational disclosures through the use of sentence structure, segregation, boldface, italics, margins, and a presumptive 12 point type standard, Ford Credit will be subjected to significantly increased costs and litigation without any clear demonstration of consumer benefit. In fact, the proposals will likely work to obscure from the consumer important transaction information. For the reasons listed herein, we support maintaining the status quo for Regulations B, Z, and M with respect to existing guidance concerning the “clear and conspicuous” standards.

Most of the comments below are specific to Regs. Z and M due to the fact disclosures in those regulations have more significant impact on our forms and operations.

**No demonstrable consumer benefit will be achieved by the proposals**

- Current Regs. Z and M contain balanced provisions that adequately highlight important disclosures. These carefully crafted rules were the result of extensive negotiations, comments and research among all interested parties. By requiring *all* disclosures to have attention drawn to them, existing highlighted disclosures will be obscured.

- There has been no showing of need or any compelling evidence put forward for requiring additional attention to all Reg. Z. and M. disclosures. No empirical evidence has been produced that indicate current disclaimers and disclosures are being overlooked by consumers.
- There has been no showing that mere uniformity (with the Reg. P clear and conspicuous standard) will bring any tangible benefits to consumers in contexts different from highly pre-scribed and regulated privacy statements. Any perceived benefits from uniformity cease to exist when Reg. P's "clear and conspicuous" disclosure requirements are applied to vastly different types of disclosures. For example:
  - Reg. Z and M disclosures are primarily designed as intermingled parts of larger documents (leases, retail installment contracts, advertisements) that were intended to clarify, supplement, and highlight key elements of those transactions. In contrast, Reg. P applies to independent, stand-alone documents.
  - Reg. Z and M disclosures are often integrated with additional state or federally required disclosures that require specific headings, language and appearance which could potentially be obscured or downplayed by compliance with the proposed rules.
  - It is likely that attempts to make the consumer "specifically alerted to the nature and significance of the disclosed information" will focus consumers' attention away from other important information present in the contract or advertisement.
  - There is no showing that merely increasing the type size will add to the legibility or understandability of the Reg. M and Z disclosures.

**Ford Credit will be subjected to significant legal risk and increased operational costs without any showing of consumer benefits.**

- The proposals reverse deliberate Congressional intent to simplify Regs. Z and M disclosure requirements. If enacted, the proposals will herald a return to hyper-technical readings and disputes in direct opposition to a history of Congressionally driven simplification stretching back to 1980. Disputes over nonsubstantive issues readily subject to different interpretations such as the impact and applicability on compliance of type size, sentence structure, boldface, italics, headings and margins will result in the same type of litigation morass present prior to TIL simplification. All of this will occur without any clear countervailing consumer benefit.
- Although Ford Credit has long relied on FRB promulgated model forms for formatting guidance, the new proposed standards will subject Ford Credit to costly redrafting and preprinting of most of its consumer contracts. We have over 850 installment sale and lease forms that would require reprinting at an estimated cost of over \$4,500,000.
- Even the best-intentioned efforts to comply could easily be held to fall short. For example, the rules call for short sentences, yet warn against imprecise explanations readily subject to different interpretations. Balancing these countervailing interests in the often space-restricted Reg. Z and M disclosure context is likely to result in second-guessing in the uncertain arena of litigation.
- The availability of our financial products is regularly advertised. Such ads are subject to Reg. Z and M and are reasonably calculated to be understandable by the average consumer. The proposed rules would seriously complicate existing disclosures found in print, radio and television advertisements. For example, the imposition of detailed guidelines on advertising disclosures is especially problematic, since advertisements may appear in many different media such as banners, billboards, window signs (and may also be multi-media in nature). Most advertisements are space constrained. Suggestions and directions in the Official Staff Commentary to use type sizes, headings, wide margins, boldface or italics, side bars, and so forth, are not useful in most advertising contexts.

- Lastly, we believe the existing standards are totally consistent with Congress' mandate to the Federal Reserve Board as set forth in the applicable provisions of the TILA and that the proposed standards could, in fact, exceed such authority.

Thank you for the opportunity to comment on these proposals. We have also taken the opportunity to reply to questions relating to debt cancellation agreements in Appendix A. Please feel free to contact me at (313) 594-7743 if you have questions or would like further information.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Korman", with a long horizontal flourish extending to the right.

David L. Korman  
Executive Vice President and General Counsel  
Ford Motor Credit Company

## **APPENDIX A**

Comments were requested by the Board on several issues relating to debt cancellation and suspension agreements. Ford Credit regularly finances debt cancellation products on closed-end installment automotive sale contracts, and as such, our comments reflect this perspective.

It is our experience that what we generically term "GAP products" (because of the "gap" between the contract balance and the physical damage insurance settlement) is sold in two forms: (1) contractual modifications to the installment sale contracts that waive the "gap" ("GAP Waivers"), and (2) insurance policies issued by an insurance company to customers covering the "gap" ("Gap Insurance").

GAP Waivers are commonly backed by insurance obtained by the original creditor to cover claims. Both the obligation of the waiver and the benefit of any back-up insurance are transferred to subsequent holders of the retail installment contract. The holder of the installment sale contract "waives" the difference between the contract balance due and the physical damage insurance proceeds received by the holder. In turn, the holder of the contract files a claim with the administrator of the "gap" contract to recover this difference under an insurance policy originally obtained by the original creditor to cover such losses.

GAP Insurance refers to an insurance product evidenced by an insurance certificate or insurance policy issued to the consumer. These policies are issued pursuant to applicable state insurance laws and regulations. An "administrator" is often appointed by the issuing insurance company to provide claims processing functions. These administrators typically market and service both GAP Waiver and GAP Insurance products.

In the automotive finance industry, motor vehicle dealers present GAP products to consumers at the time vehicles are purchased and financed. The cost for either GAP Waiver or Gap Insurance is typically included in the "Amount Financed". The dealer may also offer optional credit life, disability (accident and health) or unemployment insurance, but these products and "gap" products are not usually "packaged" together. We are unaware of "conversions" from products such as credit insurance to GAP products during the term of the obligation.

Unless prohibited by law, dealers prefer selling GAP Waivers. In most states, therefore, GAP Waivers are the predominant product offered and financed. The GAP products we finance typically cover only the event of total loss of the vehicle and do not extend to other types of events, such as death, disability or unemployment of the consumer, or to life events such as marriage or divorce.

The disclosures contained in Reg. Z relating to typical GAP products in which all or a part of a consumer's gap liability is covered are adequate. We would, however, welcome the opportunity to review a narrowly crafted proposal that would clarify that these disclosures apply regardless of the triggering event or if the amount of reimbursement exceeds the gap.